

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **201302010**
Release Date: 1/11/2013

Third Party Communication: None
Date of Communication: Not Applicable
Person To Contact:

Index Number: 1295.02-02

, ID No.
Telephone Number:

Refer Reply To:
CC:INTL:B02
PLR-127891-12
Date:
October 11, 2012

TY:

Legend

Shareholder =
EIN =

Management Company =

FC =

State =

x =

y =

z =

Country =

Year 1 =

Year 2 =

Year 3 =

Year 4 =

Year 5 =

Accounting Firm =

Dear

This is in response to a letter dated June 21, 2012 submitted by your authorized representative that requested the consent of the Commissioner of the Internal Revenue Service (“Commissioner”) for Shareholder to make a retroactive qualified electing fund

("QEF") election under section 1295(b) of the Internal Revenue Code and Treas. Reg. §1.1295-3(f) with respect to Shareholder's investment in FC.

The ruling contained in this letter is based upon information and representations submitted on behalf of Shareholder by its authorized representative, and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of this request for ruling, such material is subject to verification on examination. The information submitted in the request is substantially as set forth below.

FACTS

Shareholder is a limited partnership organized under the laws of State. Shareholder is owned by x partners, one of which is a limited partnership owned by y taxable individuals. During Year 1, Shareholder purchased shares of FC, which is a corporation organized under the laws of Country. During Year 2, Shareholder disposed of a significant portion of its FC shares. During Year 3, Shareholder disposed of its remaining FC shares.

FC actively develops and uses certain technology to recover drillable oil. FC employs approximately z people who are engaged in exploration and extraction activities, and the management and administration functions associated with these activities. According to publicly available information, including FC's securities filings, FC generally does not engage in investment activities, with the exception of the short-term investment of working capital pending its deployment. Although FC conducts an active exploration and extraction business, its holdings of significant amounts of cash caused it to qualify as a PFIC for its Year 1 through Year 4 tax years.

For the Year 1 through Year 3 tax years, Management Company, the management company providing services to Shareholder, engaged Accounting Firm for services, including tax return preparation services, for Shareholder. Accounting Firm employs experienced tax professionals and was engaged to prepare Shareholder's partnership tax returns. Accounting Firm advised Shareholder with regard to Federal income tax matters regarding Shareholder's operations and investments. Shareholder relied on Accounting Firm to provide advice with respect to filing and reporting requirements in general, as well as any elections or statements that would be necessary to elect a specific tax treatment. The sale of the FC interest in Year 2 was reported as capital gain as the Shareholder relied on the advice of Accounting Firm for preparation of the partnership returns.

Information received by Management Company with respect to Shareholder's initial investment in FC did not indicate that FC was a PFIC. Management Company intended to invest in an active development company. Management Company, Shareholder and

FC itself considered FC to be engaged in an active business and had no reason to believe that FC could be categorized as a PFIC.

As part of enhanced tax procedures implemented during Year 3, Accounting Firm tested FC during the Year 5 annual process of reviewing and monitoring investments for PFIC purposes. At that time, Accounting Firm completed its review of FC for the prior years, and the PFIC testing indicated that FC was a PFIC from Year 1 through Year 4. Management Company engaged Accounting Firm on Shareholder's behalf to advise on the Federal tax consequences of FC's PFIC status. Based on Accounting Firm's determination regarding the PFIC status of FC, Management Company requested that Accounting Firm begin the process of preparing a request for relief.

Shareholder has submitted an affidavit, under penalties of perjury, that describes the events that led to its failure to make a QEF election with respect to FC by the election due date, including the role of Accounting Firm. Shareholder also submitted an affidavit from Accounting Firm, which describes Accounting Firm's engagement and responsibilities, and the advice concerning the tax treatment of FC that it provided to Shareholder.

Shareholder represents that, as of the date of this request for ruling, the PFIC status of FC has not been raised by the IRS on audit for any of the taxable years at issue.

RULING REQUESTED

Shareholder requests the consent of the Commissioner to make a retroactive QEF election with respect to FC for Year 1 under Treas. Reg. §1.1295-3(f).

LAW

Section 1295(a) provides that a PFIC will be treated as a QEF with respect to a shareholder if (1) an election by the shareholder under section 1295(b) applies to the PFIC for the taxable year; and (2) the PFIC complies with the requirements prescribed by the Secretary for purposes of determining the ordinary earnings and net capital gains of the company.

Under section 1295(b)(2), a QEF election may be made for a taxable year at any time on or before the due date (determined with regard to extensions) for filing the return for the taxable year. To the extent provided in regulations, the election may be made after the due date if the shareholder failed to make an election by the due date because the shareholder reasonably believed the company was not a PFIC.

Under Treas. Reg. §1.1295-3(f), a shareholder may request the consent of the Commissioner to make a retroactive QEF election for a taxable year if:

1. the shareholder reasonably relied on a qualified tax professional, within the meaning of Treas. Reg. §1.1295-3(f)(2);
2. granting consent will not prejudice the interests of the United States government, as provided in Treas. Reg. §1.1295-3(f)(3);
3. the request is made before a representative of the Internal Revenue Service raises upon audit the PFIC status of the company for any taxable year of the shareholder; and
4. the shareholder satisfies the procedural requirements of Treas. Reg. §1.1295-3(f)(4).

The procedural requirements include filing a request for consent to make a retroactive election with, and submitting a user fee to, the Office of the Associate Chief Counsel (International). Treas. Reg. §1.1295-3(f)(4)(i). Additionally, affidavits signed under penalties of perjury must be submitted that describe:

1. the events that led to the failure to make a QEF election by the election due date;
2. the discovery of the failure;
3. the engagement and responsibilities of the qualified tax professional; and
4. the extent to which the shareholder relied on the professional.

Treas. Reg. §§1.1295-3(f)(4)(ii) and (iii).

CONCLUSION

Based on the information submitted and representations made with Shareholder's ruling request, we conclude that Shareholder has satisfied Treas. Reg. §1.1295-3(f). Accordingly, consent is granted to Shareholder to make a retroactive QEF election with respect to FC for Year 1, provided that Shareholder complies with the rules under Treas. Reg. §1.1295-3(g) regarding the time and manner for making the retroactive QEF election.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This private letter ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter ruling is being sent to your authorized representative.

A copy of this letter ruling must be attached to any federal income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this

requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Sincerely,

Jeffery G. Mitchell
Branch Chief, Branch 2
(International)

cc: